

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2415 OF 2021

Rajendra Pandurang Gawade & Anr. ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.Sushant Prabhune for the Applicants.

Mr.S.R. Agarkar, APP for the Respondent –State.

CORAM : C.V. BHADANG, J.

**DATE : 3 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. The Applicant apprehending arrest in Crime No.485 of 2021 registered with Baramati City Police Station, Pune, under Section 439, 353, 379 read with Section 34 of the Indian Penal Code, Section 3 of the Mines Act, Section 9 and 15 of the Environment Protection Act and Section 3 and 4 of the Prevention of Damage to Public Property Act is seeking anticipatory bail.

2. The aforesaid offence came to be registered on the basis of the complaint lodged by Police Naik Dashrath Namdev Kolekar attached to Baramati City Police Station. According to the first informant on a prior information a raid was conducted in the river bed of Karha River at about 2.45 a.m. on 18 September

2021. It was found that one Tushar Gawade with the help of a JCB and two tractors was conducting illegal sand mining. Insofar as the present Applicants are concerned it is undisputed that one of the Applicants are the owner of the JCB and one tractor and while the other tractor with a trolley is owned by the other Applicant.

3. I have heard the learned counsel for the parties.

4. It is submitted that by the learned counsel for the Applicants that the ownership of the vehicles is not disputed. It is submitted that the vehicles were parked near the river bed and the drivers who are the employees of the applicant might have unauthorizedly used the vehicles in the incident. In short according to the learned counsel for the Applicant the Applicants have no complicity in the offence. He submitted that the vehicles as well as the sand has been recovered and there is no further recovery to made and the Applicants have co-operated with the Investigating Officer.

5. The learned Additional Public Prosecutor submitted that the offence is serious, in which one of the persons on the spot Tushar Gawade, had obstructed the public servants in the performance of the duty and asked the driver of the JCB to take the JCB away. It is submitted that although the exact amount of

sand could not be ascertained more than 1.5 brass of sand was laying on the spot. He submitted that there is concerted effort by the Applicants indulging into illegal sand mining in the river bed which is so an offence under the Environment Act.

6. I have considered the submissions made. It is undisputed that the vehicles which were found on the spot are owned by the Applicants. The contention that the drivers of the vehicles have unauthorizedly used the vehicles without the knowledge or the direction of the Applicants who are the owners of the vehicles cannot *prima facie* be accepted.

7. It is a matter of common knowledge that the incidents of illegal sand mining are on rise. There are also incidents of the public servants being prevented/obstructed in performing their public duties. In the present case there is also an offence under Section 353 of the IPC albeit against the co-accused Tushar Gawade. However, *prima facie* the fact remains that the vehicles owned by the Applicants are used for the sand mining and the use of such vehicle has not been satisfactorily explained. One of the other person who was present on the spot had fled and who is yet to be traced. The proper investigation of the offence is the paramount consideration for which the custodial interrogation of the Applicants is necessary.

8. Thus *prima facie* it cannot be accepted that the FIR is false or is lodged with the ulterior motive to falsely implicate the Applicants. At this stage no case for exercise of the discretion is made out. The Criminal Application is rejected.

9. At this stage the learned counsel for the Applicant sought extension of the interim protection in order to enable Applicants to consider further course of action. In such circumstances, interim protection which was granted on 6 October 2021 is extended for two weeks.

C.V. BHADANG, J.